



# City of Hampton, VA

## Meeting Minutes

### City Council

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

Linda Curtis  
W. H. "Billy" Hobbs, Jr.  
Will Moffett  
Chris Snead  
Christopher G. Stuart  
Donnie R. Tuck  
George E. Wallace, Mayor

Staff:  
Mary Bunting, City Manager  
Cynthia Hudson, City Attorney  
Katherine K. Glass, CMC, Clerk of Council

Wednesday, January 8, 2014

7:02 PM

Council Chambers, 8th Floor, City Hall

#### CALL TO ORDER/ROLL CALL

#### GEORGE E. WALLACE PRESIDED

**PRESENT:** Linda Curtis, W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck

**INVOCATION** - Special Guest Reverend Anderson W. Clary Jr.

#### PLEDGE OF ALLEGIANCE TO FLAG

#### MAYOR'S COMMENTS

1. 14-0057 Resolution in Recognition of Cynthia Hudson

**WHEREAS**, Cynthia Eppes Hudson was born to Margaret and Roger Eppes on February 24, 1959, in Crewe, Virginia, the youngest of six siblings: Carolyn, Roger, Thomas, Joann, Sharon, and Michael; and

**WHEREAS**, Ms. Hudson graduated from Nottoway High School in Nottoway County, Virginia; received her Bachelor of Science degree in Mass Communications from Virginia Commonwealth University in May of 1981; and her Doctor of Jurisprudence from the Marshall-Wythe School of Law at the College of William and Mary in May of 1987; and

**WHEREAS**, Cynthia Hudson was admitted to the Virginia Bar in 1987 and, in August of that year, began her law career with McGuire, Woods, Battle & Boothe in Richmond, Virginia; and

**WHEREAS**, Ms. Hudson is the proud mother of Lauren Meredith Hudson, who was born on September 24, 1989, and who is currently pursuing a Master's degree in public relations at New York University; and

**WHEREAS**, in June of 1996, Cynthia Hudson joined the staff of the City of

Hampton as a Deputy City Attorney, and in January of 2006, was appointed City Attorney; and

**WHEREAS**, during these years, her advice and wise counsel has been sought out by six Mayors and 21 different Council members; and she has served as the City Attorney under three City Managers: Jesse Wallace, James Oliver and Mary Bunting; and

**WHEREAS**, Ms. Hudson currently serves as the President of the Local Government Attorneys of Virginia, Inc. and has held various other leadership positions in that organization; and

**WHEREAS**, Ms. Hudson has also served as an Adjunct Professor at the Marshall-Wythe School of Law and at the T.C. Williams School of Law; and

**WHEREAS**, in 2012, Cynthia Hudson was honored by Virginia Lawyers Weekly as one of the "Influential Women of Virginia", an award given to individuals who are making notable contributions to their chosen professions, their communities and society at large; and

**WHEREAS**, Cynthia became a member of The Links, Incorporated in 2010, and has served as Parliamentarian and Co-Recording Secretary; and

**WHEREAS**, Ms. Hudson, is an active member of the Hampton Alumnae Chapter of Delta Sigma Theta Sorority, Inc., a public service sorority, having served as Parliamentarian under four Presidents and on various committees; and

**WHEREAS**, Cynthia Hudson is a member of the Queen Street Baptist Church and has served her church by providing valuable guidance on human resource and personnel matters; and

**WHEREAS**, Cynthia's commitment to the community has included service on the Boards of the Wilson Inn Residence for Women, Riverside Behavioral Health Center, Hampton YMCA, Transitions Family Violence Services, Boys & Girls Club of Greater Hampton Roads, as well as on the Board of Trustees of Thomas Nelson Community College.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Hampton, Virginia, that Cynthia Eppes Hudson be, and hereby is, recognized and commended for her wisdom, commitment to impartiality and objectivity, in all of her services to the Council, the City of Hampton, and to its citizens.

**BE IT FURTHER RESOLVED** that the City Council extends with pride and gratitude its most sincere congratulations and well wishes to Ms. Hudson on her appointment as the Chief Deputy Attorney General for the Commonwealth of Virginia.

**BE IT FURTHER RESOLVED** that a copy of this Resolution be spread upon the minutes of the January 8, 2014, meeting of the City Council of the City of Hampton, Virginia, and that an appropriate copy be signed by the Mayor and attested by the Clerk, and presented to Cynthia Eppes Hudson.

Mayor Wallace announced that City Attorney Cynthia Hudson will be leaving her role as City Attorney as she has been selected to be the Chief Deputy Attorney General for the Commonwealth of Virginia. He noted that the audience's standing ovation proves how much she is loved and added that members of her family including her mother, aunt, cousin, brothers (and spouses), sister (and spouse) and niece were in attendance as a surprise for this special occasion. Members of Delta Sigma Theta Sorority, Incorporated and the Links, Incorporated organizations were also in attendance and stood to be recognized. Mayor Wallace then read the resolution in recognition of Ms. Hudson.

Mayor Wallace presented a framed copy of the resolution to Ms. Hudson on behalf of the City Council, City staff and the community.

Ms. Hudson thanked the Councilmembers, City Manager Mary Bunting, City staff, friends, family and those in the community for their support. She said the responsibility for her success lies with God and her attempt to walk in the path He has set, with the values and work ethic instilled in her by her family and with the support of friends including those in Delta Sigma Theta, Incorporated, Links, Inc. and the City of Hampton staff. She said she owes a lot to everyone and she will try to do everyone proud in this next chapter of her life.

Ms. Hudson was then photographed with the members of her family who were in attendance.

**ADOPTED**

**Motion made by:** Councilmember Chris Snead

**Seconded by:** Councilmember Will Moffett

**Ayes:** 7 - Linda Curtis, W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace

**Nays:** 0

**CONSENT AGENDA**

At Mayor Wallace's request, Clerk of Council Katherine Glass read the protocol for the consent agenda. Mayor Wallace then called for the motion to approve items 2-8.

**CONSENT ITEMS**

2. 14-0001 Approval of the minutes from the special Council meeting of November 13, 2013.

**APPROVED**

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Councilmember Chris Snead

**Ayes:** 6 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace

**Nays:** 0

**Out:** 1 – Linda Curtis

3. 14-0004 Resolution Authorizing an Advance of \$1,500,000 from the City's General Fund Unassigned Fund Balance to Fund the Transportation Initiatives Project. These Funds will be Returned to the General Fund Unassigned

Fund Balance from the Proceeds of the City's General Obligation Bonds when Issued.

**WHEREAS**, the Hampton City Council appropriated, via the fiscal year 2014 Capital Budget, funds for the Transportation Initiatives Project which is to be funded from the proceeds of a City General Obligation Bond Issue planned for fiscal year 2015; and

**WHEREAS**, Council acknowledges that proceeds from a bond issue will not be available to permit the City to procure and perform necessary work in a timely manner to meet deadlines and begin preliminary work; and

**WHEREAS**, the City Manager recommends an advance appropriation of \$1,500,000 from the General Fund Unassigned Fund Balance to the Capital Projects Fund for the Transportation Initiatives Project to provide funding on a temporary basis until the General Obligation Bonds are issued, at which time the advanced funds will be returned to the General Fund Unassigned Fund Balance;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HAMPTON, VIRGINIA;** that the sum of \$1,500,000 is hereby appropriated from the General Fund Unassigned Fund Balance for the Transportation Initiatives Project and that this amount is to be returned to the General Fund Unassigned Fund Balance as soon as practicable from the proceeds of the anticipated General Obligation Bond Issue.

APPROVED

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Councilmember Chris Snead

**Ayes:** 6 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace

**Nays:** 0

**Out:** 1 – Linda Curtis

4. 14-0005 Ordinance Approving the Vacation of the 30-Foot Right of Way, 3,250 Square Feet, More or Less, Located at the Southern End of Resort Boulevard

APPROVED

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Councilmember Chris Snead

**Ayes:** 6 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace

**Nays:** 0

**Out:** 1 – Linda Curtis

5. 14-0006 Resolution Approving the City of Hampton, Virginia's Participation and Appropriation of the 2013 Emergency Management Performance Grant through the Virginia Department of Emergency Management

**WHEREAS**, the Virginia Department of Emergency Management has awarded a 2013 Emergency Management Performance Grant to the City of Hampton in the amount of \$70,740 with a local match required of \$70,740 for a total grant amount of \$141,480; and

**WHEREAS**, the grant award covers the period July 1, 2013 through June 30, 2014,

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Hampton accepts and appropriates the 2013 Emergency Management Performance Grant in the amount of \$141,480 awarded and any related supplemental funding by the Virginia Department of Emergency Management in accordance with the grant agreement;

**BE IT FURTHER RESOLVED** that the City Council authorizes the City Manager or her designee to take the necessary steps to implement this grant award.

APPROVED

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Councilmember Chris Snead

**Ayes:** 6 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace

**Nays:** 0

**Out:** 1 – Linda Curtis

6. 14-0008 Resolution Approving the City of Hampton, Virginia's Participation and Appropriation of the Commonwealth of Virginia, Department of Environmental Quality, Local Stormwater Program Phase II Grant

**WHEREAS**, the VA Department of Environmental Quality has awarded \$74,000 for the City of Hampton Local Stormwater Program Phase II Staffing Implementation Plan; and

**WHEREAS**, the City of Hampton will utilize funds to assist in hiring and training 7 new staff to operate the newly developed stormwater management program for the City of Hampton ; and

**WHEREAS**, the City of Hampton agrees to provide a match of \$258,875 by using funds already approved in the FY 2014 in the stormwater drainage account; and

**WHEREAS**, the grant award covers a 13-month period beginning on December 1, 2013;

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Hampton accepts and appropriates \$74,000, and any other supplemental funding, for the VA DEQ Local Stormwater Program Phase II Grant in accordance with the grant agreement.

**BE IT FURTHER RESOLVED**, that the City Council authorizes the City Manager to take necessary steps to implement this award.

APPROVED

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Councilmember Chris Snead

**Ayes:** 6 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace

**Nays:** 0

**Out:** 1 – Linda Curtis

7. 14-0051 Resolution Amending the Composition of the Membership of the Animal Control Advisory Committee to Make Designated Staff Members Non-Voting and Substituting Therefore Voting Citizen Members

**WHEREAS**, on June 20, 2007 the Hampton City Council adopted Resolution No. 07-0339 formally establishing the current Animal Control Advisory Committee and charging the Committee to, among other things, act in an advisory capacity to the City Council to review animal control issues in the City;

**WHEREAS**, Resolution No. 07-0339, as amended by Resolution No. 10-0512 provided that "the membership of the [Animal Control Advisory Committee] shall consist of seven (7) members: one (1) Assistant City Manager; the Hampton Animal Control Manager; one (1) Hampton veterinarian; and four (4) citizens of the City, one of which shall be a Peninsula SPCA board member whenever legally and practically feasible";

**WHEREAS**, Resolution No. 07-0339, also provides that the Committee shall meet biennially and the Council has determined that the demands of the Committee's work require more frequent meetings as determined by the Committee;

**WHEREAS**, the Council has determined, following consultation with the city manager, that the public interest is better served by converting the membership of the two city staff members on the Committee from voting to non-voting (ex-officio) status, and establishing two additional citizen member seats, thereby maintaining a composition of seven voting members, and permitting the Committee to establish its meeting frequency;

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Hampton, Virginia that:

1. The membership of the Animal Control Advisory Committee shall consist of nine members, including seven (7) voting members and two non-voting members, as follows: (a) seven (7) citizens of the City who shall include a Peninsula SPCA board member and a veterinarian or other certified animal health care professional, whenever legally and practically feasible, all of whom shall be voting members; and (b) two non-voting members who shall be the Assistant City Manager charged by the City Manager with oversight of animal control, and the Hampton Animal Control Manager; and

2. The Committee is hereby authorized to establish its own meeting frequency provided that it shall meet at least semi-annually;

3. All other provisions of Resolution No. 07-0339, as amended, not inconsistent with this Resolution shall remain in effect.

APPROVED

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Councilmember Chris Snead

**Ayes:** 6 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace

**Nays:** 0

**Out:** 1 – Linda Curtis

8. 14-0053 Ordinance To Amend And Reenact Chapter 5 "Animals", Section 5-80 "Tethering" To Exempt Facilities, Entities and Activities Licensed By the U.S. Department Of Agriculture

APPROVED

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Councilmember Chris Snead

**Ayes:** 6 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace

**Nays:** 0

**Out:** 1 – Linda Curtis

#### **PRESENTATIONS, PROCLAMATIONS, AWARDS**

9. 14-0047 Presentation of the Government Finance Officers Association's Distinguished Budget Presentation Award

Prior to presenting the Budget Office/City of Hampton with the Distinguished Budget Presentation Award for fiscal year ending June 30, 2013, Councilwoman Snead gave the following explanation regarding the award: This award signifies the achievement of the City and the budget staff. It also reflects their commitment and that of the governing body to meet the highest principles of governmental budgeting. She further explained that in order to receive the award, the entity (budget staff and City) had to satisfy nationally recognized guidelines and effective budget presentation. Those guidelines encompass the budget as a policy document, a financial plan, an operations guide and a communications device.

Councilwoman Snead noted that the City of Hampton has received budget awards for the past 18 years. She added that in order to qualify for this award, peer organizations and budget departments from across the country review your budget document and rank it based on how it is presented. She congratulated Hampton's budget team and expressed how proud she is that the team has continued to strive for this award, particularly since budgets can be difficult and intimidating. She noted the City of Hampton has one of the simplest budget documents to read and understand. She also commended City Manager Mary Bunting for playing a vital role in how the budget is presented to the citizens of Hampton.

Councilwoman Snead presented the award to City Manager Bunting, Budget and Management Analysis Department Director Gloria Washington, and Senior Budget and Management Analysts Lori Green-Braen and Marcie Sagiao.

Ms. Washington greeted those on the dais and noted that she was sorry to see

Ms. Hudson leave. She stated that she has enjoyed working for the City of Hampton for the past three years and it has been a collaborative effort working with the Department Heads, outside agencies and the members of Council. She noted that while there are challenges each year, we continue to put one foot forward to ensure we are providing the best service for the citizens of Hampton. She thanked the budget team members (those who were present and those who were unable to attend) and stated they always work with a smile regardless of the challenge. She closed thanking Council and City Manager Bunting for their support throughout this process. She noted that while we may change the process each year, it is for the betterment of the citizens of Hampton.

Mayor Wallace thanked Ms. Washington and her staff for their hard work.

PRESENTED by Councilwoman Snead to Gloria Washington, Budget Director, and staff of the Budget Office.

10. 14-0048 Presentation of the Digital Cities Award

Prior to presenting the Information Technology (IT) Department with the Digital Cities Award, Councilman Moffett gave the following explanation regarding the award: This award recognizes cities who lead by example in using information and communications technology. The award is only given to 10 cities in Hampton's population category; and, we were one of the winners within the 125,000 – 249,000 (population) category. The Center for Digital Government and Digital Communities Program in partnership with the National League of Cities identify the best electronic practices among cities nationwide.

Councilman Moffett stated he was honored to accept this award on behalf of the City of Hampton when he attended the National League of Cities Conference; however, it was the City's IT Department which made it possible. He expressed appreciation to the IT Department and then called upon City Manager Mary Bunting to assist him in presenting the award to IT Director Leslie Fuentes.

Ms. Fuentes thanked those on the dais and noted that she was sorry to see City Attorney Hudson leave. She said her staff was not able to attend the meeting; however, they are the key to making this work (in addition to all departments). She stated the Digital Cities Award looks at the types of things we do to improve services to our citizens; however, the department heads and their staff help make the IT team successful in the City of Hampton. She again thanked everyone for their support and added that we will continue to move forward in the coming years.

PRESENTED by Councilman Moffett to Leslie Fuentes, Director of Information Technology for the City of Hampton.

## **PUBLIC HEARINGS**

At Mayor Wallace's' request, the Clerk read the protocol for the Public Hearings.

Mayor Wallace noted that items 11-15 would be heard together. Ms. Glass read the titles regarding those items.

## **REZONINGS AND USE PERMITS**

11. 14-0009 Rezoning Application No. 1309-2013: by Area Development Group, Inc, the Trustees of Gloria Dei Lutheran Church, and the City of Hampton to rezone 2.488± acres to include a portion of 5 Harris Creek Road [LRSN 8003578], a portion of Fox Hill Road parallel to the east side of Willow Oaks Blvd. [LRSN 8003574] and 301 Fox Hill Road [LRSN 11000627] from One-Family Residence (R-11) District and Neighborhood Commercial (C-1) District, with conditions, to Neighborhood Commercial (C-1) District, with conditions, for the purpose of developing a Rite Aid Pharmacy. The existing use of the site is a private school.

City Manager Mary Bunting clarified that the actions read by the Clerk constitute the necessary actions for a development proposal that potentially involves the sale of land by Gloria Dei Lutheran Church to a developer that would produce a Rite Aid Pharmacy. She noted that this is a complicated rezoning because there are multiple applications. She introduced Senior City Planner Mr. Michael Hayes to give a clear, pictorial view of the site in question and to go over the actions which the legal language entails.

Mr. Hayes greeted those on the dais and then recognized City Attorney Cynthia Hudson. He stated that there are four land use applications and there is a requirement of a right-of-way vacation if this project goes through, as well as the purchase of City property. He clarified if any one of those pieces does not work, the project will not work and the applicant will prefer that all applications be denied. For example, if the school rezoning is approved but not the commercial piece, that would encumber our property back for the school with certain conditions and they would not be inclined to move the school at that point. He noted that the purpose of his presentation is to discuss the four land use applications. A copy the presentation is attached to the minutes.

Mr. Hayes stated the applications include: (1) A rezoning proposing commercial development. This was the portion that would be rezoned from two small pieces of C-1 and a piece of R-11, that being commercial district and a residential district to C-1 commercial district with conditions. (2) The rezoning for the school and daycare. This is a larger piece of property. There is a use permit required for both a school and daycare within the proposed R-11 district.

Mr. Hayes described the site location as in the northeastern part of the City at the intersection of Willow Oaks Boulevard and Fox Hill Road and Harris Creek Road outlined in black on slide 5 of the presentation.

Mr. Hayes reviewed slide 6 which outlines the existing school, another small piece of commercial property zoned for office use as well as the Harris Creek Road right-of-way (which is no longer used as a street, but still exists as a right-of-way and has infrastructure within it). He noted the portion of the slide outlined in green is zoned C-1, but with the condition that it remains open space or in public use under the current zoning. He clarified that the proposal is to move the school back on the property closer to the lake, vacate the public right-of-way and create a larger commercial property.

Mr. Hayes reviewed slide 7 which displays a map of the existing zoning. He explained that the C-1 piece on the left has conditions limited to open space, the smaller C-1 property is where the office exists, and the R-11 is the single-family district. He added that by right, it could be subdivided for single-family homes, but it is currently the site of the school. He reiterated that the proposal is to rezone to C-1 with conditions and

rezone the larger portion (shown on slide 8) to R-11 with conditions that would limit the use to a daycare and a school with use permits, if approved.

Mr. Hayes reviewed slides 9-11 which describe the future land use and City policy. He added that the City policy regarding enhancing the identity of City corridors and neighborhoods in the City is one of the key aspects which came out of the update to the community plan. He noted that we are looking at solidifying that corner and looking for improvements to make it sightlier, including some of the conditions proffered by the applicant. He also noted that we believe the application does head in that direction.

Mr. Hayes discussed each rezoning individually.

#### Rezoning Application #1309-2014

Mr. Hayes stated the first condition to focus on is the limit of uses. The applicant has proposed to limit uses of the property to those that are compatible with residences nearby, neighborhood serving type uses.

#### Rezoning Application #1309-2013

Mr. Hayes said a concept plan has been proffered as well as a landscape plan as shown on slides 14 and 15. He explained slide 15 shows the right-of-way having been vacated, and there are entrances and exits both off of Harris Creek Road and Willow Oaks Boulevard. Since traffic is a concern in this intersection, there are proposed enhancements to the intersection; however, they would be the burden of the developer if this was to move forward. He said a traffic study was done for this site and our traffic engineers agreed these improvements would be appropriate from a traffic standpoint.

Mr. Hayes said the site of the building would remain in place and would have to be constructed as on slide 15. He explained that the landscaping shown would have to take place and the screening of the parking at the site and maintaining the green buffer would also have to take place (other than the ability to create a landscape bed at the corner if approved by the Community Development Director if this application is approved). In addition, there are improvements for installing sidewalks which currently do not exist on this corner as well as pedestrian lighting in keeping with the rest of the lighting on Willow Oaks Boulevard.

Mr. Hayes stated elevations have been proffered and slide 16 shows what the building would look like if it was to be erected. It also shows the materials that would be used such as a brick-like concrete material which is colored all the way through and would not be affected by power washing, for example. He explained the picture on the top of slide 16 is the corner of the building that would face toward the intersection at Willow Oaks Boulevard and the bottom picture shows the Fox Hill Road side. The pictures on slide 17 show the building on the Harris Creek Road side which has the drive-thru facing the road, and the back of the school which faces the school property.

#### Rezoning #'s 1314-2014 and 1314-2013

Mr. Hayes said this rezoning would involve the moving of the school. The requested rezoning for that would be R-11, single-family district, and would require a use permit for the private school and daycare, if approved. He noted that the number of students

would remain the same and that there is a proffered conceptual plan with this as well. He explained the green buffered area on slide 20 would remain, and the only change would be the cut-through for the driveway. He said the buildings proposed are the same that exist today and they are proposing moving the school back to this location. He noted that this slide also shows the drive isles and proposed parking which have connections to both Willow Oaks Boulevard and Harris Creek Road.

Mr. Hayes reviewed some of the conditions for the use permit to the school and daycare listed on slides 21 and 22. He added there has been a slight change in the hours of operation since the Planning Commission meeting; however, we do not believe they will cause any burden to the neighbors.

Mr. Hayes reviewed the analysis of the proposal listed on slide 23 and noted that community meetings were held on April 9, 2013 and May 29, 2013. He added that the Planning Commission received three response letters from local community organizations as well as emails from concerned citizens and neighbors expressing their opinions. Those letters and emails have been included in Council's packages.

Mr. Hayes closed his presentation stating staff recommends approval of all four applications with conditions.

The conditions for these items are attached to the minutes.

Ms. Bunting added that Mr. Hayes reviewed the land use applications; however, a part of this proposal would also involve the sale of a piece of City land. She clarified that this action is not on this evening's agenda because if these items are not approved, there would be no need to sell the land; however, if Council approves these items, it will be on February's agenda.

Mayor Wallace opened the floor for questions from those on the dais.

Councilman Stuart said he was initially against this project because adding another traffic complication seemed to be a bad idea; however, he has sought to keep an open mind and move forward as the facts allow him to do so. He inquired about the landscape plan noting that some trees would have to be moved to make way for one entrance off of Willow Oaks Boulevard, and asked if the other trees will be left alone? Mr. Hayes clarified that it is in verbiage in the proffer statement that the mature trees would stay. He also clarified there is the ability to remove trees at the corner if a particular landscape plan is approved for the corner only. Councilman Stuart noted this means we are at least protecting what can be protected.

Councilman Stuart said it appears that traffic will be making a right turn off of Willow Oaks Boulevard and another right turn into this business. Mr. Hayes concurred. Councilman Stuart said it also appears that traffic will be able to safely turn left off of Harris Creek Road and into the facility. Mr. Hayes concurred. Councilman Stuart then asked Mr. Hayes to revisit the Concept Plan slide on the R-11 part of the project and asked if this represents the remaining portion of the mature stand of trees. Mr. Hayes replied, yes. Councilman Stuart asked if that property is going to bisect into one place for an entrance for the school and the other daycare facility, the stand of trees. Mr. Hayes replied, yes. Councilman Stuart asked for assurance that there is binding verbiage in the documentation that those stand of trees will remain in perpetuity. He

said he would like for everyone who is concerned about these trees to know what the end result will be. Mr. Hayes stated the end result will be that the zoning regulations on the property would dictate that those trees remain. He added that it would be a zoning violation to tear down the trees and reiterated that the rules for this property would state that those trees would have to remain.

Mayor Wallace added that is with the condition that if or until there a public process to change it. Mr. Hayes agreed. Mayor Wallace noted that he did not want anyone to be under the impression that it is in perpetuity and there is no context or way it can change. He added that it is highly improbable, but there is a public process that has to be adhered to if a change is to be contemplated and take place. Mr. Hayes agreed.

Councilman Stuart asked if the strip along Willow Oaks is currently City owned property meaning zero tax dollars are produced by it. Mr. Hayes said that is his understanding. Councilman Stuart asked if at the end of this process we will have both portions (commercial and residential) returning to the tax rolls. Mr. Hayes stated that is true of the commercial portion; however, he is not certain how private schools or religious exemptions would play into it. He noted that staff does not look directly into what it will do for the tax base when they do reviews of land use applications. Councilman Stuart said the care of the property is currently handled by the City, and asked if the care for the property will now move to the new property owners. Mr. Hayes said that is correct.

Vice Mayor Curtis expressed concern about the traffic changes and patterns, particularly the fact that the map does not show the relationship of the new ingress into the parking lot of the proposed Rite Aid with relation to what is on the other side of the street. She expressed concern specifically about the ingress into the Willow Oaks Shopping Center between the bank and the gas station.

Mr. Hayes clarified that the entrance lines up with the Willow Oaks Shopping Center across Willow Oaks Boulevard so that there is a normal four point intersection and a left turn lane exists for making left turns into the Willow Oaks Shopping Center.

In response to Vice Mayor Curtis, Transportation Engineer I Martin Willson explained that the median strip from Fox Hill Road up to the first entrance of the South entrance of the new Rite Aid will be taken out, so there will be a dedicated left turn northbound into the Willow Oaks Shopping Center and a dual left southbound on Willow Oaks Boulevard to turn east onto Fox Hill Road. He added that an additional lane usage will be southbound right turning through and noted that a dedicated additional left turn is being added. He explained the queuing levels during the worst traffic times of the day will be better with this additional left turn with the full development of the Rite Aid.

Vice Mayor Curtis expressed concern about people who may be crossing those lanes of traffic from the Willow Oaks Shopping Center to the Rite Aid. Mr. Willson said people will have the ability to go through the Willow Oaks Shopping Center into the Rite Aid.

Councilman Tuck said the diagram shows arrows going straight, right and left coming out of the proposed Rite Aid lot with the alignment across from the entrance to the Willow Oaks Shopping Center and according to the plan, the queue goes from 175 feet to between 164-168 feet. He asked how one cannot expect traffic to be backed up by somebody who is trying to make a left turn or go straight across into the shopping center.

Mr. Willson said the 168 feet includes the left turn and explained that when the analysis was done, it was determined that the left turn out of the Rite Aid is actually inclusive with 168 feet. Councilman Tuck said the sense is you would not have the intersection blocked by vehicles that are trying to turn left but if you put another southbound lane, you would move traffic seven to eleven feet and it is hard for him to grasp that that would not block the entrance.

Mr. Willson said we did not have the additional left turn lane in the first site plan, and because traffic was backing up from the intersection to the left turn out of the Rite Aid, we made a stipulation that the queuing levels were such that we wouldn't allow it. When they remodeled it, an extra left turn lane was added allowing the queuing level such that you can get the left turn out of the Rite Aid and get in that lane; that is where the 168 feet 95th percentile length comes in (it includes all the left turns coming out of the Rite Aid).

Councilman Tuck said when the new Wawa was proposed, traffic would not allow a right turn from the CVS into the Wawa and would force traffic to the left; those two driveways did not align, but in this case, the driveways do align with each other and asked why that would not be a right turn only coming out of the Rite Aid parking lot.

Mr. Willson stated the length of the queuing level is such that when we put the additional left turn lane in, the levels now would allow the left turn out of the Rite Aid. Councilman Tuck said a citizen stated he cuts through the parking lot of the shopping center because there are cars trying to go straight into Elizabeth Lakes which keeps vehicles that need to make a right turn only from turning right. He asked what led to the consideration of having two left turns. Mr. Willson said there was a lot of emphasis from the neighbors wanting the dedicated right turn and when they modeled it and looked at queuing levels, they found out that the queuing levels were best if the outside lane was a combination through and right turn lane. He added if the outside lane was right turn only, the queuing levels would have been greater.

Councilman Tuck inquired about the additional traffic that will now be emptied on Harris Creek Road. Mr. Willson said there is little trip generation in the morning; however, in the evening, there are more trips so, with the new development, there will be a maximum of approximately 10 vehicles turning left on Harris Creek Road.

Councilman Tuck said residents are concerned about seeing the pedestrian lighting 24/7 and asked if anything can be done to make the lighting less visible for those living nearby? Mr. Hayes clarified that the pedestrian lighting is along Willow Oaks Boulevard and then addressed Councilman Tuck's question regarding the site lighting. He explained that there is a condition that states all exterior lighting (site and building) shall comply with the City of Hampton outdoor lighting policy and procedures and shall consist of full cut off fixtures that are directed downward and inward to the site.

Councilman Tuck inquired about the height of the signage. Mr. Hayes stated the signage would have to comply with the standard sign ordinance; however, he did not know the exact height requirements off the top of his head.

Councilman Tuck inquired about whether or not this would be a 24 hour operation. Mr. Hayes stated that under the conditions there is the potential for it to be a 24 hour operation and there has not been anything proffered which would restrict that.

Councilman Tuck asked if we could get a proffer where the operation could close at midnight. Mr. Hayes stated that would be up to the applicant and they do have the ability to proffer that type of issue.

Councilman Moffett said he has a new appreciation for traffic engineers after witnessing the work on King Street and then asked if we have enough capacity to handle the anticipated traffic due to this project. Mr. Willson replied yes and added that when looking at the level of service, it does not degrade, and while there had been a lot of contention about the queuing levels of the southbound movement at Willow Oaks, the level of service will actually increase.

Councilman Moffett said there were some concerns in the community regarding the move and asked for clarification if the scope for decision making for Council is regarding the land use, not necessarily the business decision. City Attorney Hudson concurred and added the context for the land use decision, particularly in the nature of a rezoning, is the City's comprehensive plan and what it contemplates for particular land uses in the area under consideration. She continued saying the competitive or business climate affect on neighboring businesses is not the relevant consideration in exercising your land use authority and making a land use decision.

In response to Councilman Moffett and Mayor Wallace, Mr. Hayes listed the three civic associations referenced earlier and their positions regarding this project: (1) Elizabeth Lakes Civic Association - the Board's (not the general residency) position was that they did not see it as their function to brief constituents or solicit their buy in (2) Malvern Civic Association – had no fundamental problems with the basic plans of the developer and Gloria Dei; however, had a general concern about creating new retail space while leaving one vacant, as well as a concern about traffic impacts and commercialization at Fox Hill Road. The Board saw value (in the project) to surrounding neighborhoods and would like to see the project move forward. (3) Willow Oaks Recreational Association – reached out to 229 residents, but only heard from 4% (16 individuals). Of those who responded, many were in favor of the proposed development, but had some concerns involving traffic and empty retail space at the existing development.

Mr. Hayes noted that we did not officially hear from Phillips Lake on this matter. He said we did not receive a full recommendation from the full body of those groups specified in the letters and there was an expression of potential support assuming it could be executed correctly regarding things such as the traffic concerns and ensuring it wasn't an overwhelming commercial development in this area.

In response to Councilman Moffett, Mr. Hayes stated that the Planning Commission did recommend approval. Councilman Moffett then inquired about additional objections other than traffic and the fact that it simply is not desired. Mr. Hayes said the main concerns were regarding traffic, people who simply did not want additional commercial expansion beyond the existing development, and the 24/7 hours of operation.

Mayor Wallace added that some of the associations also expressed concern about a vacancy being created by abandonment of the building to be moved into the new one.

Councilman Hobbs asked how they propose to shield the parking lot from the view of the roadway. Mr. Hayes explained it will be done with a combination of evergreen hedges

and taller trees which have to be a minimum of two feet at planting and maintained no higher than four feet so that we don't create any kind of policing issues and you can see into the site.

Mr. Hayes addressed Councilman Tuck's question regarding signage. The signs would be permitted on a C-1 development or a monument sign of up to 48 square feet and 8 feet tall. Pylon signs are permitted, 48 square feet and up to 14 feet in height. For perspective, Mr. Hayes noted that the vast majority of Coliseum Central is zoned C-2 which allows much larger monument signs which go up to 12 feet in height, so it is a 4 foot difference if you are looking at a monument sign.

Councilman Tuck asked Ms. Hudson to speak about what transpired regarding the City saying Willow Oaks Association has defaulted in maintaining the buffer.

Ms. Hudson said the document Councilman Tuck is referring to is not a deed; instead, the City is the title owner of the buffer Council may be considering for conveyance in connection with this development. However, tied to the City's acquisition and ownership of the buffer was a maintenance agreement and certain promises the City made with respect to how the buffer might be used into the future to include promises the City made in exchange for certain commitments and obligations to be performed by the homeowners' association. Those obligations were not performed and other maintenance obligations were never performed. There was a failure of performance that constituted a breach of the agreement and made it unenforceable.

#### PUBLIC HEARING: JOINT FOR ALL RELATED ITEMS

Mayor Wallace opened the Public Hearing and asked speakers to alternate between the podium and the free-standing microphone to expedite the Public Hearing.

Mr. Charles Bang, Senior Pastor at Gloria Dei Lutheran Church and Head Master of the School, 3 Fulton Farm, greeted those on the dais, congratulated Ms. Hudson on her new position and made the following statement: I, too, am a resident and homeowner in Hampton, where I live with my wife, Deborah, who is an Art Teacher at Frances Asbury Elementary School.

Pastor Bang recognized several of his colleagues, Church staff, support team, Church members, school employees and neighbors in favor of the proposal by having them stand.

Pastor Bang continued his statement: On December 14th of next year, Gloria Dei will celebrate the 50th anniversary of its founding as a congregation. This past year, our school celebrated the 40th anniversary of its service to the community. During these past decades, our Church and school have grown alongside our community neighbors and from our very modest beginnings, we have evolved into a congregation of significant size and impact and a school and daycare program that educates 400 children and provides daycare for hundreds of families from every socioeconomic strata and demographic. In addition to our core ministries of worship, Christian education and care for families, our facilities, as you well know, are open to the community. We have striven to be good neighbors and those who have entered our doors at any one point recognize that. They know that they are welcome. They know that their children are welcome and they know that they are welcome into our facility and the ministries that we perform. We

have grown over the years. Those of you who go around our neighborhood know that we maintain our facilities as best we can. They are a shining star, if not a beacon in our neighborhood. Now, we are looking to expand our facilities, and relieve some of our debt service so that we can better serve you and the residents of our community. That is what this proposal will enable us to do. For those of you who may still be tenuous in your support, the only offer I can make is that there is witness of over five decades of service to our community. Everyone knows us.

Mayor Wallace asked Pastor Bang to conclude his comments as his speaking time had expired.

Pastor Bang continued: I was new to Hampton three years ago and I cannot go anywhere in this town without support from you for our endeavors, our ministry and our education. Thank you for your tolerance and extra time.

Mr. Earnest Atkins, 22 Eagle Pointe Road, greeted those on the dais and made the following statement: I am a life-long resident of the City of Hampton and the Vice President of the Gloria Dei Congregation Counsel and I have the privilege of being the Shepard for the Gloria Dei Lutheran School while on Counsel. I am here not to do anything other than to urge you to approve these requests. It is the feeling of the Church Counsel and the congregation, generally as a whole, that this will greatly enhance our school operation and provide a better educational prospect for our students. As Pastor Bang stated, it will also relieve us of some debt service of which we would like to rid ourselves. We believe that the project will be an enhancement, not a deterrent to the Fox Hill neighborhood. Thank you for your time.

Mr. Joe Frank, 739 Thimble Shoals Blvd, Suite 105 Newport News, Va., greeted those on the dais, thanked Ms. Hudson for her service, stated he is certain she will do us proud at her new position in Richmond and then made the following statement: I want to thank all of you for serving on City Council. Not many people know the sacrifice and the commitment that it takes, and I may be one of them. This community owes you all a debt of gratitude for the hard work and the commitment that you make and the sacrifice you make personally. I for one want to acknowledge that. I represent Gloria Dei and the developer in this project. I think it is an excellent project. You've heard a lot, but I think there are some things that need to be said that, perhaps, have not been and I would like to share those with you from my perspective. First and foremost, the developer came to the Church and has agreed not only to pay the Church for the land that it is acquiring to build the Rite Aid Drug Store, a 14,000 square foot update, state of the art drug store pharmacy that will provide services that the existing facility does not in the Willow Oaks Shopping Center, but also at their (the developer's) expense and at no cost to the Church will relocate all the buildings of the school to the more distant property between Willow Oaks Boulevard and Harris Creek Road. When they relocate it, it will be upgraded. There will be better playgrounds, better parking, better access, and new Information Technology (IT) equipment so that the 400 students who go to this school will have a much better educational experience than they have had historically because there is more capacity to provide that with the revenue that is being generated for the Church from this project. They will be able to substantially reduce, if not eliminate, their debt which will give the Church and the members of the congregation a lot more flexibility in what they do to enhance services and outreach for the neighborhood and for the community of Fox Hill which they are committed to doing. There are a lot of features of this that I think are important. The landscaping buffer along Willow Oaks, which has

been talked about by many, has been the responsibility of the City of Hampton to maintain and to keep attractive since 1990 (at least). This project will have the developer and the Church purchase that strip from the City and restore it to the tax rolls. It will save the City the cost of the maintenance and the landscaping and the upgrades.

Mr. Frank stated he was told he could have extended speaking time as he represents the applicant. Mayor Wallace allowed him a few extra minutes of speaking time.

Mr. Frank continued his statement: This will relieve the taxpayers of the responsibility of having to maintain that and the cost, it will return that property to the tax rolls and it will provide responsible people, the Church and Rite Aid, the responsibility of maintaining the landscaping and upgrading and improving it. There will be a sidewalk placed there which will give more safety for pedestrians to walk from the Willow Oaks area to Fox Hill Road. It will be lighted in the same way that lighting exists along Willow Oaks and the other areas. The area where the Rite Aid is which is now Church property will become taxable again as commercial real estate in the City, so it restores that area to the tax rolls. The City traffic engineers looked at this traffic flow and pattern very carefully. The developer hired a private engineering group to do the same thing. The two worked together and when concerns were expressed at numerous public hearings and meetings when we heard feedback from the community and from the staff, we engaged the engineers and they came up with the plan that we now have which everybody believes addresses fully and completely the traffic concerns that have been expressed. So, it wasn't a case of somebody trying to impose a ridged approach, but one that was very flexible and was addressed collaboratively between the developer's engineers and the City engineers in response to concerns presented by the public relative to the traffic. The result is you end up with a double left turn lane facing southbound to help traffic coming out of Willow Oaks onto Fox Hill.

Mr. Frank continued his statement on another topic: The other point that I want to make has to do with the fact that there has been some concern expressed about the Rite Aid moving out of the shopping center into a new location leaving a vacancy. That is not the responsibility of this project to this developer. Rite Aid decided to leave the shopping center for business reasons. They thought that a new location would be better for them and enable them to provide better services in a more modern facility emphasizing health education that they don't presently offer. That is, I think, an attraction for the neighborhood and for the community. They proposed to open this 24 hours a day. I know Mr. Tuck suggested that perhaps closing at 1:00 a.m. might be appropriate. The reason they proposed 24 hours a day is in looking at the community and looking at the demographics of the community and learning that there were aging people in the neighborhood and that there were no other nearby pharmacies that were open 24 hours, they believe that it was a better service to the community to provide pharmacy access 24 hours a day, so that if somebody was sick, and had to leave the emergency room and they had to go pick up medicine, there was a place they could go that was convenient to do that. The Pastor told me of a similar story where he had to go to Newport News to get a prescription because there wasn't a place open late at night after he left the emergency room. So, there is a valid reason for doing this.

Mayor Wallace noted that there are other places in Hampton which are open 24 hours. Mr. Frank agreed.

Mr. Frank continued his statement: If Council is of the view that the hours ought to be less than that, I think that is something that we can resolve, but there is a real reason for staying open that has to do with delivery of quality service to people in the community. Those are the points that I want to share with you because I think, given the benefit and value to the Church and the Church community, the school in particular which has tremendous value in this neighborhood, not only are they currently serving 300 people in this particular school and 175 or so children in daycare, they have been doing it for 40 years. Thousands of Hampton citizens have been benefited by the good work and the great staff and teachers that they have at the school. This gives them an opportunity not only to continue that service, but also to enhance it, improve it and make it more available and more accessible. So, with those things in mind, I hope that you would consider supporting this. It is important, I think, to the Church and important to the school and important to the neighborhood. The other thing I would tell you is one of timing. That is if we can get your approval tonight (and I hope we will), then the developer can begin work to move the school immediately and start construction so that it will be open for the children in September. If this is delayed for any reason, then we won't be able to accommodate the children in September and they won't have the benefit of the improved facilities. For those reasons, I would urge you to support this. The last thing I would say is that your staff has been absolutely terrific in this. They have been thoughtful. They have been careful. They have given this a lot of thought and we have worked with them collaboratively, I think. They have shared their thoughts. They have shared their concerns. We have worked together to try to resolve the issues that were identified to us by members of the community, the staff, and the professionals. We have come up with a plan that I think truly does address the concerns and issues that you have to consider. Thank you for your consideration. We appreciate your support.

Mr. Frank opened the floor for questions from those on the dais.

In response to Councilman Tuck, Mr. Frank stated he believes the Rite Aid current hours of operation are 8 am – 10 pm.

Mayor Wallace noted that Mr. Frank was allowed additional speaking time because he is the counsel for the parties involved. He reminded the rest of the speakers to adhere to the three minute speaking time limit.

Mr. Keith Leckrone, 540 Elizabeth Lake Drive, greeted those on the dais, noted that he has been a resident at that address and a member of Gloria Dei for approximately 20 years and then made the following statement: I am one of the individuals that worked with the Church to reach out to the community associations to try to explain the project. We worked pretty hard to try to reach out to hundreds of homes and thousands of individuals. We went to great efforts to try to explain this project. The description that City staff gave was accurate. Most of the people we didn't hear anything from, so I don't think it was a hot button issue. We had a great amount of support especially from older people and families with kids. There are also some individuals who had great concerns and we can understand those concerns. We tried to modify as much as we could to help those concerns out. In October of 2009, I stood before the City Council here when Gloria Dei asked to do reclamation of Rice's Pitt. At that time, people were concerned about their property values and the traffic along Harris Creek Road. Some of the concerns were very vociferous. We tried to reach out to those concerns and we understood them. In the three years we have been doing that project, we've had over 10,000 trucks going into that site and 10,000 going off. We brought in 100,000 cubic

yards of material and probably most people in the City of Hampton do not realize that that was one of the largest earth moving projects in the City of Hampton over that period of time. I think it is because we were responsible in how we undertook that task. I think as a Church, we will also continue to be responsible. We have a track record for these things. We understand our neighbors' concerns and will act in the best interest to modify those. Thank you.

Ms. Rebecca Francese, 22 Hatteras Landing, President of the Willow Oaks Recreational Association, greeted those on the dais and City staff and made the following statement: When Gloria Dei first brought this project to our Board of Directors, we sat down with the Church and discussed it. The Board of Directors unanimously agreed with the project, we felt that it was a very good project for our community; however, we as a Board did not feel that we should represent our entire 426 homes that make up Willow Oaks. At that time in May, we sent out postcards by the Church to an informational meeting at the Church. We had a very poor response to that meeting. We still wanted to continue to inform the community of the proposed development, so in our newsletter that went out in July, we informed all of the residents of the development and posted all the drawings on our website and invited them to look at the website as well as on our Facebook page. We gave them a deadline of August to respond to the development and give us their comments. We received very few at which time we sent out another email to the 229 residents' email addresses we have in our community as well as an additional totaling 400 emails for Howe Farms, Malvern and those residents that attend our pool. We were very diligent in letting the residents know that this is an important project that will affect our community. When we finally received responses, we received only 20. Sixteen of those were in favor of the project and four were not; therefore, we did have an approval rate of about 75%. It's important to state that the concerns were what has been brought forth tonight: additional traffic concerns, empty retail space and the creep of the retail corridor. After we sent the email to Gloria Dei and to our community for transparency purposes outlining our responses, we actually received additional emails in support of the project. So, I feel that we made it very clear to our residents what was going on and we received an overwhelmingly positive response to that. We are looking forward to the improved corridor with the sidewalks that will be a wonderful entrance to our community. We are looking forward to a continued positive relationship with Gloria Dei who have been very good community members to Willow Oaks and they have also been very transparent in this effort. Thank you very much.

Mr. Rick Graves, 106 Woodburn Drive, Senior Administrator of Gloria Dei Church, greeted those on the dais, noted that he has lived in Hampton for 34 years, that he and his wife have attended Gloria Dei Church for over 20 years, that his children and grandchildren have attended the day care and school and then made the following statement: I've been involved with the basic business administration there and as a result of that, I have been involved heavily with this project since its inception well over a year ago. What I would like to reiterate and explain a little bit more is the process that we went through in order to try to reach out to the communities to make sure that we got their involvement, listened to them, worked with the City staff to try to produce reactions and results that would make sure that our community and the community that we live in continues to be better and improved upon and in no way suffers from any part of this project. We honestly believe that and want you all to know that the Church, the members of the school and staff are members of the community and certainly don't want to do anything that would provide any kind of negative aspects in development for our community. We are dependent on our community with the Church and the school there

and we are certainly not looking for any kind of degradation or anything that would create negative aspects there. Granted there are traffic problems (as you have heard), we think this project may help key improvements to the overall traffic situation, especially right at the corner (that I go through sometimes four times a day) at Fox Hill Road and Willow Oaks Boulevard. We want to make sure that you know that we are bound at our own by maintaining the buffer area other than the breakthroughs there that will be needed for Rite Aid and the school. We promise that we will keep that area better than it has been maintained in the past and not at taxpayer cost. We believe that we can help enlarge some of the projects in working together with some of the other neighborhood developments. We have a unique situation there and we think we can pave the way by working with Rite Aid and with the City groups to make sure that the other projects develop that help improve trash collection, help improve the overall traffic and generate all kinds of cooperative spirit, and try to make the neighborhood better as a result of this project. I know you have heard all these things over and over again, but I want to make sure you understand how much we reached out to the individual civic groups. We put out a banner announcing the meetings two weeks ahead of time in front of the school and in front of the Church. We endeavored to try to get all of the website information that we could. We sent out postcards to those people who were not impacted or didn't have the organizational involvement with their civic groups. We tried everything we could to reach out, listen to and react to the needs of the community and we are the community. Working with the Planning staff has been an incredible endeavor and I cannot congratulate them more. We have a very dedicated staff here at the City of Hampton. Thank you very much.

Mr. Dennis VanCamp, 326 Burgh Westra Drive, made the following statement: First, I would like to inform Councilman Stuart that there will be two roads built through the tree buffer, not one. There is one for the school and one for the Rite Aid. It is further down, so you don't get two violations in the agreement that they made a long time ago. I would like to remind our City Attorney that the City ratified an agreement to protect this buffer with no maintenance conditions. The agreement between Willow Oaks and City employees was after the Council voted with no such conditions, plus the Willow Oaks City employee agreement was not Council approved. I have the dates and the documents right here, so I disagree with her (the City Attorney) on that aspect. In the agreement that was voted, ratified and filed in City Hall, this property was to be for public use only, period. It says – in no uncertain terms, no other use shall occur upon this property and there is no expiration date. The City Manager and the Director of Community Development said these agreements don't matter if the Planning Commission and new Council vote to approve this project. It would seem to me that before you can even start any plans/rezoning processes that you would need to have the Council address a previous Council's legacy. When my wife brought up the previous Council's vote at the Planning Commission, a representative from the City Attorney's office said it was only an agreement. Very disconcerting. Next, I have to ask if this is worth it. This project will break the word of a previous Council, cost multiple rezonings, create two new roads in a bad location, redo the Fox Hill Road/Willow Oaks Boulevard intersection, transfer the tree buffers-ownership to private hands, cause the Willow Oaks Shopping Center to lose an anchored tenant and, last but not least, create a myriad of traffic problems along Willow Oaks Boulevard and Harris Creek Road. You would think that if you are jumping through all of these hoops that there would be an overwhelming positive here for the City and its coffers, yet in reality, all that is happening here is Gloria Dei is moving back and Rite Aid is moving over about 200 yards. That's it. Those of us negatively affected by this project are fighting a process that has over a two year head

start. Our very own Home Owners Association, Elizabeth Lakes, voted for the project with zero input from those of us affected most and never made one attempt to contact us regardless of what they say. I have neighbors here (all of my immediate neighbors) who will verify that none of them were informed. In closing, we have nothing against Gloria Dei. They have been great neighbors to date. We have friends in the congregation who park in our driveway and we would have no problem with them moving or expanding their fine school. Nor would we have a problem with them using their land for what it is currently zoned for which is low density residential, but as far as commercial zoning is concerned, we feel that with all things considered, it is the wrong place and the wrong time. Thank you

Ms. Traci VanCamp, 326 Burgh Westra Drive, made the following statement: I would like to personally thank the City and the Council for responding to all of our calls and email and all of your help. I would like to tell you that we do oppose the proposed rezoning and all the aspects of this proposal. It is not about Gloria Dei and it is not about Rite Aid; it's about zoning. There was a lot of hard work that went into the Hampton Community Guide Plan and it seems like this proposal is disregarding it. When you have a proposed rezoning with a minimum of ten conditions or more, maybe it shouldn't happen. The plan for future land use says to protect residential neighborhoods, encourage commercial investments in established center districts and protect environmentally sensitive areas. Rite Aid is currently located in an established center. Hampton needs to strengthen this establishment: Willow Oaks. 301 Fox Hill Road was already zoned in 1991 to accommodate Gloria Dei by going from a multiple residence or R-M to C-1 neighborhood commercial. This parcel of land is only .34 acres. Now, Gloria Dei and Rite Aid would like to vacate public land and rezone to almost three acres. The Master Plan speaks out about protecting residential uses in adjacent neighborhoods. We live in an adjacent neighborhood, Elizabeth Lakes. We would view this project. Currently, we have no problems with what is there. Several letters were sent to the City from the surrounding home associations, some in support, but the main concerns were traffic, traffic, traffic. Also, they talked about an older established commercial center that has blighted and vacant properties. The plan for the proposed rezoning also includes parcel of the residential corridor on Harris Creek Road. The school rezoning is requesting access to the proposed school off of Harris Creek Road in between homes that are a very narrow part of this road. This, too, was noted in the Hampton Community Plan as needing an upgrade to widen from Gloria Dei to Northern Road. We have no issues with Gloria Dei relocating or expanding their school or daycare, but maybe it needs to wait until the infrastructure is in place to handle the changes to the current traffic patterns. Gloria Dei owns several parcels on Harris Creek Road and I am sure that there is a better way to access their proposed school and daycare. In conclusion, there will be the right time for this moving of the school and daycare when the rezoning request is not for acquiring City land, when better traffic patterns are in place to handle the heavier traffic flow into residential neighborhoods, and when the rezoning does not mean creeping commercial into residential zones. I ask that you do not approve this project and that if you do approve it, that you have restrictions like not having a 24 hour storefront. I kindly ask you to deny the rezoning of 1309-2013.

Ms. Laura Byrd, 1 O'Keefe Lane, greeted those on the dais, noted that she has been a life-long resident of Hampton and made the following statement: My concern is not just the rezoning, but also the traffic. I think the traffic engineers and Planning Commission have greatly underestimated the impact that it is going to have on both Willow Oaks Boulevard and Fox Hill Road between the intersections of Willow Oaks Boulevard and

Harris Creek Road. I live off of Harris Creek Road and I haven't heard anybody address the impact of Gloria Dei School's new driveway that is going to come out on lot 21 of Harris Creek Road. That is a vacant lot in between two houses and its intention is basically that a house should have been built on that lot – it's a residential area, it is not intended for a driveway for a school. It is a very narrow part of Harris Creek Road and to have all the bus traffic and parent traffic coming out onto that very narrow part where the buses are actually longer than the road is wide which means that when the buses turn out, they are going to have to cross over both lanes. It is going to be very unsafe and it is going to put an enormous burden of traffic onto a very small, narrow part of Harris Creek Road which happens to be directly across from where I live. The school says they tried to contact people. Harris Creek has no Power of Attorney (POA), we have no civic or community association. I was never contacted until I got the letter about the December Planning Commission meeting. So, had I not received that letter, I would not be here tonight. I have no problem with what the school is trying to do, and I have no problem with the Church, but I don't want to see the added burden of traffic on Harris Creek Road nor Fox Hill Road nor Willow Oaks Boulevard. Not to mention the vacant space in Willow Oaks. I've been going there all my life. I think the shopping center is a great place. I don't think we need the expansion onto Fox Hill Road, nor do we need another large retail drug store. I heard somebody mention that there was no 24/7 pharmacy; well, there is. There is a Walgreens on Mercury Boulevard and if you are leaving a hospital in Newport News or a hospital in Hampton, to get to Fox Hill, you have to pass that 24/7 Walgreens, so there is another option if you need a 24/7 pharmacy. However, at this point, I respectfully request that the City Council deny all the proposed zoning requests. If any of you are members of the Church or have children or grandchildren who attend that school, then I request that you abstain from voting on this matter tonight because it truly would be a conflict of interest and I don't think that would be good for any of us. Thank you.

Prior to Mr. Quarles giving his comments, Mayor Wallace noted that Mr. Quarles was the last person who signed up to speak and that the Public Hearing would close following Mr. Quarles' comments.

Mr. Dan Quarles, no address given, greeted those on the dais, noted that he was speaking on behalf of the Willow Oaks Shopping Center and made the following statement: I think everyone knows perfectly well where Willow Oaks Shopping Center is located, right across the street from this proposed rezoning. I want to make clear that the shopping center is not opposed to the relocation and expansion of the Gloria Dei School. That is not an issue or concern of the shopping center. What is of great concern to the shopping center is the proposal that we are going to rezone residential property or non-retail commercial property right across the street from a shopping center to make new commercial retail space. The reason that is such a concern for the shopping center is that the shopping center already has a vacancy rate of around 30%, so why would we create new commercial space right across the street from a shopping center that is already suffering from a high vacancy rate that indicates a low demand for commercial space? It's not to bring to the neighborhood a new business. As I take it from the comments and discussion tonight, I think that everybody knows this – Rite Aid is already right across the street from the shopping center, so this isn't a proposal that is going to bring in new business to town or to the neighborhood. It's not a situation where a business wanted to come to the Fox Hill neighborhood but the shopping center was full because of such a high demand and we need to make new commercial space to accommodate new retail; that is not the situation. In the packet, if you read carefully the

comments from the various homeowner associations, all of those reflect the fact that in each of those communities, there were people who were concerned about vacancy at the shopping center. The owner of the shopping center did prepare a lengthy letter to Council and I take it from some of the comments that that did make its way to Council or into the package. I do want to go back to Mr. Moffett's comment. This is not a situation where the shopping center is saying deny this application as a business decision; this is a land use decision, and it is a bad land use decision to grant this application because what the result of it will be is to take an existing commercial node where demand is weak and expand it so it sprawls down a residential corridor so that a business can simply move across the street into this expanded commercial node creating more vacancy in a shopping center that is already struggling with a high vacancy rate. That's a bad land use decision. So, we are asking you to deny it, not as a business accommodation to the shopping center, but because it is bad use of the City of Hampton's land. Thank you for taking that into consideration tonight.

Mayor Wallace closed the Public Hearing and called for the motion regarding items 11-15. In response to Councilman Tuck, Mayor Wallace clarified that Council is considering items 11-15 simultaneously.

Councilman Tuck offered a proffer that the Rite Aid operates until 1:00 a.m. City Attorney Cynthia Hudson noted that a motion had not yet been made and asked Councilman Tuck if his intent was to seek further discussion. For the purpose of discussion, Councilman Tuck made the motion for approval with the proffer that the Rite Aid not be a 24 hour pharmacy.

Ms. Hudson explained that in this situation, the question about modification of the proffer that has been voluntarily made calls into question what Council has authority to do. She noted that typically, we could ask the developer if they are willing to modify the proffer in that way; however, it must be voluntary under the law as opposed to imposed by action of Council.

Councilman Tuck suggested following whatever process is required (that the applicant can consider and agree to) to adjust the hours of operation. Ms. Hudson explained that would require a modified application and a new advertised Public Hearing unless the applicant is willing to voluntarily state that they would modify that condition as presently proffered.

Mayor Wallace called for the motion to approve as submitted and then seek the possibility of getting a limitation on the hours of operation or a motion to deny it since there is no limitation of hours of operation.

Mr. Frank noted that Councilman Tuck is the only person (that he is aware of) who raised concern about the 24 hours of operation. He added that if the majority of Council is also concerned about the hours of operation and if that is what is needed to get the project approved, he would discuss it with the Rite Aid representative tonight to determine what hours they may be able to effectively operate. He reiterated that if the majority of Council does not have an issue with the 24 hour operation, there is no need to suggest the change because Rite Aid believes a 24 hour operation is the right structure for those in the community who may need pharmaceutical support 24 hours a day.

Ms. Hudson noted that Councilman Tuck's motion had not yet received a second, so discussion may be out of order at this point.

Mr. Frank clarified that the client wants to be cooperative with Council and address any concerns or issues they may have.

Mayor Wallace called for the motion. Ms. Hudson noted that Councilman Tuck's initial motion has died for lack of a second, and stated he may solicit Council's pleasure on the item.

Councilman Stuart commented that he had some reservations about this issue when it initially came before Council and he did not think he would propose the motion; however, he will make the motion to approve it with no restrictions on time and as stated by the Planning Department. He added that he was pleased to find out that two Walgreens in Hampton were open 24/7, particularly since he has children. He said to deny residents of Fox Hill the ability to peruse a business that has chosen its business model as 24/7 seems unfair, uncaptialistic and the opposite of what we should be deciding. The motion was seconded by Councilman Moffett.

Councilman Tuck expressed concern about voting for all of the items at once. He explained that he is not against the school expansion or the Church, but since all items are being taken together if he votes no, unfortunately it will appear that he is against what the Church and the school want to do. He said we talk about business decisions, commercialism, capitalism and that is great, but currently, the hours are 8:00 am to 10:00 p.m., but they could be 24 hours a day to take care of the needs in that community. He said he thinks residents are concerned about the 24 hour service as well as the traffic and noted that he was not comfortable with the explanation given regarding the traffic. He also expressed concern about the school which will open off onto Willow Oaks Boulevard and will be across from the entrance by the cleaners and public library which may cause a change in the queue plan. He reiterated his concern about the traffic and the hours of operation, and emphasized that he is not against the school expansion or moving.

Mayor Wallace noted that the traffic engineer has assured Council that the traffic problems will be abated.

Councilman Stuart asked if it would be preferable to modify the motion to present the items in singular order allowing greater flexibility on one or more of the items. Councilman Tuck said that would be ideal; however, we have established that we would vote on all of them. Ms. Hudson noted a motion, second and vote to divide the question/items would be necessary if Council wished to deal with them separately.

Councilwoman Snead also expressed concern about the traffic, and added that the 24 hour operation may take care of the traffic issue because people will realize they have the flexibility of going at a later time. She then asked when people turn left out of the parking lot toward Fox Hill Road, will there be two left lanes and an additional lane to take traffic to the right or straight? She said she would be more comfortable if there was no right turn on red at the light at Fox Hill Road onto Willow Oaks Boulevard giving time for traffic to turn left.

Ms. Hudson noted a vote is not necessary if the general consensus of Council is to divide the question. Mayor Wallace requested a formal motion to divide the question. Ms. Hudson clarified that the motion to divide the question would supersede the motion on the floor. Councilman Tuck moved to vote on each item individually, Councilman Stuart seconded the motion.

Councilman Moffett commented that many people have stated that they have no problem with the school or the Church; however, unless all of the items are approved, there will be no funding for the move. He said to him, this is conflicting logic; however, he is willing to move forward with separating the items. He recommended moving forward with voting it up or down in an attempt not to prolong the meeting.

Vice Mayor Curtis said it was to her understanding at the beginning of the discussion that all of these things needed to happen together because if one of the items is voted down, then the entire stool falls over as it is only standing on two legs, so the purpose of dividing the motion would presumably be to let somebody vote "no" on one of the revisions. Ms. Hudson clarified they can vote "no" even if they are together.

PRESENTED by Katherine Glass, the Clerk of Council, reading the titles of 14-0009, 14-0010, 14-0011, 14-0012, and 14-0007, with the staff presentation being given by Mike Hayes, Senior City Planner. A joint public hearing was held on these five items.

MOVED TO APPROVE subject to receipt of a proffer that it not be a 24 hour pharmacy. The motion died for lack of a second.

**Motion made by:** Councilmember Donnie R. Tuck

MOVED TO divide the question so that a separate vote is taken on each of the five related items.

**Motion made by:** Councilmember Donnie R. Tuck

**Seconded by:** Councilmember Christopher G. Stuart

**Aye:** 1 - Donnie R. Tuck

**Nay:** 6 - Linda Curtis, W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, George E. Wallace

APPROVED subject to 13 conditions. One vote was taken on item numbers 14-0009, 14-0010, 14-0011, 14-0012 and 14-0007.

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Councilmember Will Moffett

**Aye:** 6 - Linda Curtis, W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, George E. Wallace

**Nay:** 1 - Donnie R. Tuck

12. 14-0010 Rezoning No. 1314-2013: by the Trustees of Gloria Dei Lutheran Church and the City of Hampton for development of a private school and daycare at a portion of 5 Harris Creek Road [LRSN 8003578], a portion of a parcel parallel to the east side of Willow Oaks Boulevard [LRSN 8003574], 21 Harris Creek Road [LRSN 8003587], a portion of Harris Creek Road [LRSN 13002446], and Harris Creek Road [LRSN 8003606]. The

property is zoned Neighborhood Commercial (C-1) District, with conditions, and One-Family Residence (R-11) District.

This item was discussed simultaneously with item 14-0009.

PRESENTED by Katherine Glass, the Clerk of Council, reading the titles of 14-0009, 14-0010, 14-0011, 14-0012, and 14-0007, with the staff presentation being given by Mike Hayes, Senior City Planner. A joint public hearing was held on these five items.

MOTION TO approve subject to receipt of a proffer that it not be a 24 hour pharmacy. The motion died for lack of a second.

**Motion made by:** Councilmember Donnie R. Tuck

MOTION TO divide the question so that a separate vote is taken on each of the five related items.

**Motion made by:** Councilmember Donnie R. Tuck

**Seconded by:** Councilmember Christopher G. Stuart

**Aye:** 1 - Donnie R. Tuck

**Nay:** 6 - Linda Curtis, W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, George E. Wallace

APPROVED subject to 13 conditions. One vote was taken on item numbers 14-0009, 14-0010, 14-0011, 14-0012 and 14-0007.

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Councilmember Will Moffett

**Aye:** 6 - Linda Curtis, W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, George E. Wallace

**Nay:** 1 - Donnie R. Tuck

13. 14-0011 Use Permit No. 1084-2013: by the Trustees of Gloria Dei Lutheran Church and the City of Hampton for a private school at a portion of 5 Harris Creek Road [LRSN 8003578], a portion of Fox Hill Road parallel to the west side of Willow Oaks Boulevard [LRSN 8003574], 21 Harris Creek Road [LRSN 8003587], a portion of Harris Creek Road [LRSN 13002446], and Harris Creek Road [LRSN 8003606]. The property is zoned Neighborhood Commercial (C-1) District, with conditions, and One-Family Residence (R-11) District, which permits private schools subject to the approval of a Use Permit. This application accompanies a rezoning application (RZ #1314-2013) to rezone the property listed above from R-11 and C-1 to R-11 with conditions. The existing use of the site is a private school, vacant land, and a borrow pit.

This item was discussed simultaneously with item 14-0009.

PRESENTED by Katherine Glass, the Clerk of Council, reading the titles of 14-0009, 14-0010, 14-0011, 14-0012, and 14-0007, with the staff presentation being given by Mike Hayes, Senior City Planner. A joint public hearing was held on these five items.

MOTION TO approve subject to receipt of a proffer that it not be a 24 hour pharmacy. The motion died for lack of a second.

**Motion made by:** Councilmember Donnie R. Tuck

MOTION TO divide the question so that a separate vote is taken on each of the five related items.

**Motion made by:** Councilmember Donnie R. Tuck

**Seconded by:** Councilmember Christopher G. Stuart

**Aye:** 1 - Donnie R. Tuck

**Nay:** 6 - Linda Curtis, W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, George E. Wallace

APPROVED subject to 13 conditions. One vote was taken on item numbers 14-0009, 14-0010, 14-0011, 14-0012 and 14-0007.

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Councilmember Will Moffett

**Aye:** 6 - Linda Curtis, W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, George E. Wallace

**Nay:** 1 - Donnie R. Tuck

14. 14-0012 Use Permit No. 1092-2013: by the Trustees of Gloria Dei Lutheran Church and the City of Hampton for a daycare at a portion of 5 Harris Creek Road [LRSN 8003578], a portion of Fox Hill Road parallel to the west side of Willow Oaks Boulevard [LRSN 8003574], 21 Harris Creek Road [LRSN 8003587], a portion of Harris Creek Road [LRSN 13002446], and Harris Creek Road [LRSN 8003606]. The property is zoned Neighborhood Commercial (C-1) District, with conditions, and One-Family Residence (R-11) District, which permits daycare 3 subject to the approval of a Use Permit. This application accompanies a rezoning application (RZ #1314-2013) to rezone the property listed above from R-11 and C-1 to R-11 with conditions. The existing use of the site is a private school.

This item was discussed simultaneously with item 14-0009.

PRESENTED by Katherine Glass, the Clerk of Council, reading the titles of 14-0009, 14-0010, 14-0011, 14-0012, and 14-0007, with the staff presentation being given by Mike Hayes, Senior City Planner. A joint public hearing was held on these five items.

MOTION TO approve subject to receipt of a proffer that it not be a 24 hour pharmacy. The motion died for lack of a second.

**Motion made by:** Councilmember Donnie R. Tuck

MOTION TO divide the question so that a separate vote is taken on each of the five related items.

**Motion made by:** Councilmember Donnie R. Tuck

**Seconded by:** Councilmember Christopher G. Stuart

**Aye:** 1 - Donnie R. Tuck

**Nay:** 6 - Linda Curtis, W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, George E. Wallace